



Decision

Matter of: Pipeline Construction, Inc.

File: B-256799

Date: July 13, 1994

Bill Cosmas Giallourakis, Esq., for the protester, Lucie J. McDonald, Esq., and Cynthia Guill, Esq., Department of the Navy, for the agency. Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

Digest

Agency improperly denied request for bid correction where bid remains low after correction, agency agrees that protester's bid reflected a transcription error, and there is clear and convincing evidence of the intended bid.

DECISION

Pipeline Construction, Inc. protests the denial of its request for bid correction under invitation for bids (IFB) No. N62472-93-B-0056, issued by the Department of the Navy, for roof truss replacement at Naval Weapons Station Earle in Colts Neck, New Jersey.

We sustain the protest.

Under the IFB, bidders were to submit prices for three contract line item numbers (CLINs). Six bids were received by the February 15, 1994, bid opening date. Pipeline's bid of \$381,660 was apparently low, and S&A Contracting Inc.'s bid was second low at \$603,140. The revised government estimate for the project was \$624,756.

¹CLIN 1a encompasses all of the work described in the specifications, except for the work specified under CLINs 1b or 1c; CLIN 1b is for the removal and disposal of certain pipe insulation in the gymnasium area; and CLIN 1c is for removal and disposal of certain pipe insulation above the gymnasium stage area.

On February 16, the president of Pipeline Construction contacted the agency and informed it that he had made a clerical error in preparing Pipeline's bid, and that the intended bid was \$588,660.

On February 21, Pipeline submitted a written claim of mistake in the amount of \$207,000, and requested upward correction of its bid to \$588,660. Pipeline's submission contained supporting evidence in the form of the original work sheet, subcontractor quotations, and an affidavit by the company president who had himself prepared the bid. The work sheet contained areas for entering component costs as well as quantities, and a "total" column to compute extended component costs as well as the total cost for CLIN 1a. The work sheet included the following:

	<u>Quantity</u>	<u>Material</u>	<u>Labor</u>	<u>Subcontract</u>	<u>Total</u>
Structural					
Steel Trusses	9ea. @	\$5,000	\$15,000	\$190,000	
Bracing for					
Bays	8ea. @	\$1,250	\$5,000	\$50,000	
				\$230,000	\$23,000

Pipeline explained that it had inadvertently dropped a zero from the \$230,000 figure when the amount was transcribed into the "total" column on the far right side of the work sheet. This transcription error resulted in Pipeline entering on its bid a total for CLIN 1a of \$380,000, which reflects the work sheet total calculated on the basis of the erroneous \$23,000 entry, rather than the correct total of \$587,000, and an overall total bid of \$381,660 for the three CLINs, rather than the intended \$588,660.

At the request of the agency, Pipeline submitted an additional affidavit from the company president concerning the preparation of the bid work sheet, mainly with regard to the methods used to calculate profit and overhead. The protester's work sheet entries include profit and overhead, without any separate profit and overhead markup categories. The agency subsequently advised Pipeline that it could withdraw its bid but that correction was denied because of a lack of clear and convincing evidence to establish the intended price. Specifically, the agency determined that it was unable to determine Pipeline's intended price due to the apparently inconsistent underlying methods that Pipeline

²Pipeline's prices for the other CLINs were \$1,500 for CLIN 1b, and \$160 for CLIN 1c.

used to calculate profit and overhead based on subcontractors' quotes. This protest to our Office followed. The agency subsequently made award to S&A Construction based on urgent and compelling circumstances; however, there has not been any appreciable performance under the contract.

Pipeline points out that the only mistake alleged involves the transcription of one number and that correction of the transcription error clearly indicates the intended bid. Pipeline argues, therefore, that the agency erred in not allowing it to correct its bid because, through its work sheet, Pipeline provided the agency with clear and convincing evidence which establishes both its mistake and its intended bid.

Generally, under Federal Acquisition Regulation (FAR) § 14.406-3(a), a procuring agency may permit a low bidder to correct a mistake in its bid prior to contract award where the bidder submits clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended bid. Whether the evidence meets the clear and convincing standard is a question of fact, and our Office will not question an agency's decision unless it lacks a reasonable basis. P.K. Painting Co., B-247357, May 5, 1992, 92-1 CPD ¶ 424. So long as the bid remains low after correction, work sheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Id.

Here, the agency acknowledges, and we agree, that the work sheet "clearly shows" that Pipeline made an error in transcribing numbers for CLIN 1a. Pipeline's bid remains low if the \$207,000 upward adjustment is permitted. The only dispute concerns the sufficiency of the evidence indicating the intended bid. Since the only mistake alleged involves the transcription of one number--and the agency agrees that this figure was transcribed incorrectly-- correction of the transcription error clearly indicates the intended bid. See J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ ____.

The agency does not directly dispute the authenticity of Pipeline's work sheet, and any unstated concern in this regard is not supported by the record. The record establishes that the work sheet was prepared prior to bid opening and that it formed the basis of Pipeline's bid, including the mistake in that bid. The work sheet for CLIN 1a identifies costs for 14 components and Pipeline has

presented supporting documentation such as subcontractors' quotations to explain how it arrived at various figures appearing on the work sheet, some of which were estimates based on the company's experience. The work sheet totals including the erroneous \$23,000 entry are correctly added to arrive at the indicated overall \$380,000 entry for CLIN 1a. Additionally, the work sheet was produced promptly along with an affidavit by the person who prepared it, in which he has sworn to its authenticity and explained how it was prepared, and how the error occurred. The record thus provides clear and convincing evidence establishing that the work sheet is authentic and that it was relied on in the preparation of the bid.

The agency has raised various concerns regarding the underlying calculation of component costs which, in our view, do not affect the adequacy of Pipeline's evidence. Specifically, the agency is concerned about the way in which Pipeline reached the \$180,000 and \$50,000 figures for the trusses and bays, respectively. The agency notes that the work sheet figures do not correspond to the \$150,000 that was quoted by the subcontractor for labor and equipment for the steel trusses. Pipeline has explained that it added overhead and profit to the subcontractor's quote, and that the figures inserted on the work sheet included these cost elements. This is consistent with the overall work sheet methodology, which does not utilize a separate markup category for profit or overhead. Pipeline explained that overhead and profit were estimated and were uniformly applied throughout its work sheet, and varying percentages which reflected differences in the nature of the work involved as well as business judgments. In the context of a sealed bid procurement, where cost and pricing data are not required, there is no basis to object to a bidder's estimates of indirect costs and profit, as was done here. Any inconsistency in such markups was entirely irrelevant to the mistake here, since the transcription error occurred after the overhead and profit had already been added to the subcontractor's quote. As the record provides no basis to question the authenticity of the work sheet, the agency's recognition of the error in transcribing the figure on the work sheet necessarily leads to the conclusion that there is clear and convincing evidence of the intended bid.

J. Schouten Constr., Inc., supra.

Accordingly, we find that Pipeline's bid, which is low with or without correction, should be corrected to \$588,660. We recommend that S&A's contract be terminated for convenience and that award be made to Pipeline, if otherwise appropriate. We also find that Pipeline is entitled to its costs of filing and pursuing the protest, including reasonable

attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1994). Pipeline should submit its certified claim for its protest costs directly to the agency within 60 working days of the receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

/s/ James F. Hinchman
for Comptroller General
of the United States

B-256799

July 13, 1994

The Honorable John H. Dalton
The Secretary of the Navy

Dear Mr. Secretary:

Enclosed is a copy of our decision of today sustaining the protest of Pipeline Construction, Inc. challenging the denial of its request for bid correction under invitation for bids (IFB) No. N62472-93-B-0056, issued by the Department of the Navy for roof truss replacement at Building C-29, Naval Weapons Station Earle, Colts Neck, New Jersey.

We sustain the protest because there is clear and convincing evidence of the transcription error alleged by Pipeline and of the intended bid price, and Pipeline's bid remains low after correction of the mistake. We therefore recommend that the contract awarded to S&A Construction be terminated for convenience and that award be made to Pipeline, if otherwise appropriate. We also find that Pipeline is entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees.

Since the enclosed decision contains a recommendation for corrective action, we direct your attention to 31 U.S.C. § 3554(e)(1) (1988), which requires that the head of the procuring activity responsible for the solicitation report to our Office if the agency has not fully implemented our recommendations within 60 days of receipt of our decision. Please advise us, in any case, of the action taken on the recommendation.

Sincerely yours,

/s/ James F. Hinchman
for Comptroller General
of the United States

Enclosure